

**Growth Policy Implementation Program**  
**Planning Board Subcommittee**  
**March 10, 2009**

**In Attendance:** Planning Board members present: Gail Richardson, Kerry White, Susan Kozub, Patti Davis, and Byron Anderson (portion); Staff present: Planning Director Greg Sullivan, Planner Sean O'Callaghan, County Administrator Earl Mathers, and Commission Assistant Glenda Howze; Guests present: Dennis Carlson.

**Call to Order**

Chair Richardson called the meeting to order at 3:05PM and requested that members review the previous meeting minutes as many members didn't have a copy.

**Approval of Minutes from 2/24/09**

Sean O'Callaghan offered clarification to the minutes on page two, second paragraph. He suggested modifying the second to last sentence to read "Greg said that no transfer of rights from rural zoning to a zoning district's receiving area is specifically authorized by the draft language." Ms. Kozub stated that she will offer comments on the document after receiving the re-write draft. Mr. Mathers suggested that a list of attendees at the meeting should be listed in the minutes. Glenda agreed to ask Crystal to include the names on the minutes in the future as well as to incorporate those listed on the 2/24 attendance sheet in the minutes for that meeting. Chair Richardson stated that the minutes would be approved as part of the record with the changes as described.

**Public Comment**

Ms. Kozub stated that she is in attendance to listen and learn more about this topic, with the possibility of requesting assignment to this subcommittee.

**Continued Discussion on Proposed AG-160 Zoning District Regulations (TDR/C)**

Ms. Davis asked if the portion that the committee is reviewing is going to be re-written, and if so, if we are wasting time with this review. Mr. Sullivan stated that it is not a waste of time. The draft will potentially be re-written based on the discussions in these meetings and the wishes of the Commission. The portion to be discussed today has not been addressed previously. That is why we are here, to address the concerns of the committee and re-write as necessary. Mr. O'Callaghan stated that this is a draft and the Planning Department is working on a re-write of Article III. It still needs to work out things with the County Commissioners. The re-write is a public document but it is not going out as a re-release yet so as to avoid confusion. This working draft is to show the committee what we've done to incorporate its comments and those from the County Commission.

**Article XXII, Section 3**

Mr. Sullivan explained the organization of Article XXII, noting that it is now three sections but could be divided into four with the inclusion of a definition section. The sections include a

“What are we talking about?”, “Why are we here? (including findings, etc.)” and the difference between a TDR and a TDC.

Ms. Davis had comments on Article XXII, Section 2. She posed two questions 1) 2.03.1.2 – Land owners are going to have the expense of having their land appraised rather than the using the market value to determine the value. She stated that she doesn’t feel this is a good idea and adds a burden to the landowner. 2) 2.03.3 – where did the \$20,000 number come from? Mr. Sullivan reiterated the questions for clarification purposes. Ms. Davis stated that she has always been an advocate of market value versus appraised value. Mr. Sullivan explained that the value of the property is not the value of the credits. This goes back to the Solimar study. They recommended one of two methods, either acreage based (i.e.: 1 per 20) or appraisal based allocation of TDCs. The County Commissioners chose the latter. We need a formula to allocate TDCs for the appraisal based allocation. The appraisal is supposed to identify any diminution in property value associated with foregoing development opportunities on the property over the specified 40-year term. Mr. O’Callaghan explained further that if you take the reduction in value (\$100K) and divide that by \$20,000, that equals 5 credits. Ms. Davis stated that similar to conservation easements, there is no proof of the value until you have a market. Giving TDC’s based on acreage is a concrete method. Appraisals are a guess. Mr. Sullivan stated that he has not heard this from anyone else thus far. The appraisal method has not been questioned. Mr. Mathers inquired as to how you get there with an acreage based method. Mr. Sullivan stated that properties with higher amenities or higher values, the restriction makes greater impact on the value of the property. The Commissioners made a policy that the more reduction in value, the greater number of credits to be granted; less reduction equals less credit – to make it more fair and less subjective.

Mr. Carlson stated that three appraisers in the Association have echoed the same concerns expressed by Ms. Davis on how the TDO’s will be appraised. They didn’t voice them previously because they waited for the document to start expressing their concerns. They are also concerned about the subjective versus concrete results. Mr. Sullivan asked if the proposed appraisal based method is hard or impossible. Mr. Carlson stated that it is not impossible, but the appraisers don’t know how they would accomplish it. Mr. Sullivan suggested that we need to not approach this program with why we can’t do something, but rather what are the solutions to achieving it. The values based mechanism won out when considered by the Commission. If it won’t work, it won’t work but we have to wait to hear everyone say that it can’t be done. If we don’t know that it can’t be, we shouldn’t just give up. It may be easier to do it based on acreage, but is it most fair? Ms. Davis stated that she is speaking from an appraiser outlook, not a landowner and noted that things like distance from town, amenities, etc., could also be figured into the equation with market value. Mr. O’Callaghan asked how it would work to incorporate distance and amenities if it is acreage based. Ms. Kozub stated that we should look at how other communities have done it for an answer to this problem. [Fort Collins] Mr. O’Callaghan stated that Fort Collin’s use of TDR’s is very different than this proposal. He noted that our use of credits is very innovative and there is no one else that has been identified that has or is using this approach. It is difficult to use what others have done because generally they use the TDR approach only, not the TDC. He explained that a lot of

research has been done by two consultants and planning staff and nothing similar has been identified.

Mr. Sullivan explained that it took us a long time to go through all of this. We have a marketable commodity and there is a distinction between rights and credits. Example of other such innovative policies by other communities: an individual wants to tear down an old, small house and build a new, bigger house – they have to buy square foot credits from someone who has placed a restriction on their small home that it will never be expanded. Ms. Kozub inquired about an example of recording restrictions on such a transaction – perhaps this could be used as an example of how to accomplish our goals. Mr. Carlson stated that disclosure is an issue for the realtor. Ms. Kozub responded that it still has to be documented somewhere. Ms. Davis suggested using a mass-appraisal, tax based appraisal method whereby we are giving ‘x’ number of credits per ‘x’ number thousand dollars of value. (Noted that she doesn’t like mass appraisals though because each property is unique.) She further explained that the number of credits per value would be established first, through the mass appraisal. Mr. Sullivan asked if mass appraisals take into consideration the amenities of the property. She stated that they do. Mr. White stated that appraisals by the Department of Revenue are based on best use of the property. They don’t take into consideration development possibilities. They don’t look at development possibilities on agriculture ground – that is only based on acreage and the site home, etc. Development opportunity has applied that value to the property. Ms. Davis stated that she disagrees; property in Pass Creek is appraised differently than that in the donut and reiterated that mass appraisal is a starting point.

Mr. Sullivan asked if the appraised value of a property is available to the public. It is. He suggested there may be a way of using GIS to map by value zones. Mr. O’Callaghan stated that this would risk introducing additional error into that system. Ms. Davis stated that using each land class in a given tax ID has its own value. This would be less costly than an appraisal. Mr. Sullivan asked if things such as water rights and amenities are built into appraisals [by DOR]. Mr. White stated that they are not. Soil types are, but not water rights. You can sell your property and not sell your water rights. Mr. White asked if the appraisal shouldn’t include the development value. Mr. O’Callaghan stated that we could talk to the County Commissioners and come up with an agreeable calculation; stated that Ms. Davis has a good point. Continued discussion took place on how these calculations might work and whether appraisers could accomplish the end goal and be willing to put their stamp on it. Mr. O’Callaghan stated that a private appraiser can consider the development opportunities but a mass appraisal might not. Mr. White stated that DOR appraisers look at surrounding neighborhoods, houses in close proximity and what they are selling for when determining the value of a home. However, property valuations are different. Ms. Davis stated that she understands the idea but doesn’t like the lack of subjectivity. Mass appraisals don’t have as much subjectivity. Mr. Sullivan stated that it is important to have these technical discussions but it is also important to look higher, policy-wise. There are a lot of important things to consider when determining the number of credits. Is equity important based on the value of the property? Is it more important to be simple (the regulation)? Is it more important for the process to be easy and inexpensive for the landowner? Is it more important to be easily understood? The County

Commission came up with a set of criteria and made a policy decision based on those criteria. Mr. O'Callaghan suggested the Committee further flush out this subject at the next meeting and noted that these concerns were brought up previously and the County Commissioners went with the appraisal option. Chair Richardson stated that the mass appraisal is something that they should consider given this discussion.

Ms. Davis asked for clarification on her second question regarding the \$20,000 figure. Mr. Sullivan explained that the \$20,000 came from discussions that were bounced around for years. That was the amount that was paid in Middle Cottonwood for a transfer of a development right. We need to have an adjustment of allocation deviser and this was what was chosen. Discussion took place regarding Montana being a non-disclosure State. No one knows how much people are willing to pay until they pay. The person that paid for the credit in Middle Cottonwood was willing to share that information and that was used for our purposes.

### Section 3

Mr. Sullivan explained that there has been a lot of discussion about TDR's. Densities are set in each district. If a person owns a tract of record in the Rural Zoning District, they get one right. Page 22-8, Applicability stated that if you have parcel with a legal, non-conforming use, you have an entitlement and can transfer that entitlement; this section also includes the procedures and recordation for this transfer. 3.06 states that the transfer of a TDR does not immediately authorize use of that TDR. It has to go through review for the use to be authorized. This includes generic language for anywhere TDR's are authorized. Article III, page 3-11 provides specific language for how TDR's are used in the Rural Zoning District. Mr. O'Callaghan noted that Article XXII Section 3.05.3.2 currently references the Development Right Removal (DRR) Overlay as described in Article III, it also needs to reference the Adjusted Density (AD) Overlay, as described in Article III, to cover situations where one or more development rights have been removed from a piece of property, but the property still retains one or more development rights. Ms. Kozub stated that the examples are very helpful in understanding how it will all work. Mr. Sullivan stated that the parcel allocation rule is to allow flexibility for landowners who have already been allocated TDCs.

Ms. Davis asked how when someone sells or transfers credits, how that affects the tax basis. Mr. Sullivan stated that he has had conversations with numerous professionals about this including Federal Income tax professors from Missoula, attorneys that specialize in taxes, etc. The Commission needs to make a decision on how much information to give people and at what point to instruct people that they need to consult their accountant and/or attorney. Ms. Davis asked if there would be answers to this question prior to releasing the document to the public? Mr. Sullivan stated that there is not going to be one answer to the questions about tax implications. Landowners are going to have to consult their attorney and tax accountant. No one has done this before so no one will have all of the answers. The County cannot be put in the position of giving tax and/or legal advice to individual landowners. Chair Richardson reminded the group that the main issue is that this is a voluntary program. No one is being

forced to participate. Ms. Davis agreed and stated that it is a tool. Mr. Sullivan stated that most other states have specific enabling legislation that addresses this issue, but Montana does not. The County Attorney has stated that the law suggests that there is applied authorization in zoning, but there are more questions to be resolved at some point.

Mr. White commented on section 3.04 and suggested adding “except as referenced in 3.08” to this section. He also asked about the difference between TDC’s at 40-years and TDR’s as permanent. Mr. Sullivan stated that is the difference between a TDC and a TDR. Discussion took place regarding this difference. Mr. White stated that when a TDC is applied to property and it is sold, it becomes a right to develop. Mr. Sullivan stated that the right to additional density doesn’t become an automatic right, it becomes the ability to receive more density. A right doesn’t transfer from one piece of property to the next. Mr. O’Callaghan stated that the receiving zoning regulation addresses what rights are authorized. Ms. Kozub stated that a credit is different in different zoning districts. Mr. O’Callaghan stating that in selling TDC’s, a person has still retained the underlying zoning right. This is the difference in 40 years versus permanent. Within the Rural Zoning District, TDRs are transferred at a one-to-one ratio. If those rights transfer to another zoning district, those transfers must be authorized by that district’s regulation. Within Rural Zoning, the specific procedures to transfer from one property to another is a CUP if the properties are not contiguous.

#### **Presentation and Beginning of Discussion on Updated Rural Zoning Draft**

Mr. O’Callaghan noted that this is a working draft with changes as proposed by the GPIIP committee and the County Commissioners. This is not set for re-release yet as that could only lead to more confusion. Changes were detailed: The title has changed from AG-160 to Gallatin County Rural Zoning District. Section 2 has been limited to only referencing the boundaries which are described in Appendix III.A; Appendix III.B, the zoning map has not changed. Appendix III.C was added at the request of the Planning Board’s GPIIP Committee for an outline of the RCD site visit and site analysis report. Noted a change to 3.01, removing “new Residential Dwelling Unites and/or” from the sentence. The overall theme in this re-write is consolidation. Commercial has been placed all into 3.02.1.

Mr. White inquired about the use of the word “permitted” in section 4.01, stating that it is unclear as to whether this is implying “allowed” or requiring a permit. Mr. Sullivan stated that this word is common nomenclature in planning documents and exists in all of the County’s other regulation documents as implying “allowed.” He suggested that you risk making things more confusing in trying to make them clearer. Mr. Sullivan requested that the group focus on the big changes.

Mr. O’Callaghan noted that there are big changes in section 4.03. The Commissioners instructed staff to remove all land use permits. 4.04 addresses development standards; the table from the previous draft has been removed and the exceptions are listed clearly. Landowners will apply for a CUP rather than a variance. 4.04.3.3 addresses setbacks for situations where there is common ownership of adjacent tracts – setbacks don’t apply to these tracts. Section 5 addresses tracts of land created by subdivision exemptions and public services. Much of this

section was deleted and consolidated. The Commission may request further modification to this section as well. 5.03 addresses tracts of record for public services. There are no major changes to sections 6 or 7.

Mr. Sullivan stated that the basic provisions of the zoning regulation is now just over seven pages. This is a significant reduction in the volume of the regulation. 5.01 has big changes, there is no longer a set period of time where a tract created by family transfer must be retained by the recipient. Mr. O'Callaghan stated that previously Ms. Davis suggested that under the RCD program that landowners should be able to choose a representative of their own choice, and that has been incorporated. Cross-referencing has also been done where applicable. Mr. O'Callaghan stated that building envelopes are addressed in section 9.06.3.2 and questions that were previously asked by the committee have been clarified here. Page 3-19; section 9.11 Evaluation criteria has been amended per the comments from Mr. White.

Ms. Davis inquired about the Program Administrator listed in section 9. When the regulation is adopted, the Commission will most likely designate the Planning Director as the Program Administrator and that person will then have the authority to delegate these duties as necessary. This process is not set in stone so as to leave it flexible for changes to the designation as needed.

Mr. O'Callaghan suggested that at the next meeting the committee could provide further comment on the re-write after time to review. Ms. Davis asked if the draft would be further revised before the next meeting. Mr. O'Callaghan stated that it is a working draft and Mr. Sullivan noted that the County Commissioners haven't seen it yet. Mr. O'Callaghan will visit with the Commission about this draft between now and the next meeting for their comments, but there shouldn't be any further revisions until comments have been gathered from both groups.

Ms. Kozub asked if there are no land use permits and someone builds something inappropriate, will resolution be through a complaint based system? The options will be to take the structure down or request an after-the-fact CUP. Mr. Sullivan stated that the CUP process doesn't require a hardship. The height restrictions are based on law. If this law changes, which it may under HB 486, then this type of restriction may be removed from the regulation. Ms. Kozub asked if there is a difference between a CUP application and an after-the-fact CUP application. Mr. O'Callaghan confirmed that the fee structure sets an after-the-fact application at a higher fee. Further discussion took place regarding HB 486 and the impact its passage could have on the County and regulations. The County would not have to include height restrictions and setbacks, but they would not be prohibited from doing so either.

Ms. Kozub inquired about the definition of a Community Center (page 3-5) and suggested that adding a definition might be a good idea. Mr. O'Callaghan stated that it could be added or Community Center could be removed and included in the "other" category with other structures that are up to the discretion of the Commission – "...other similar uses as determined by the Commission."

4.02, page 3-2; 500 ADTs has been removed from the CUP requirements as well as “additional dwelling unit” has been removed.

Chair Richardson asked if any member of the committee had further questions. There were none at this time.

#### **Public Comment on Agenda Items**

There was no public comment on agenda items.

#### **Other**

The next meeting is scheduled for March 24<sup>th</sup> at 3:30PM. On the agenda for this meeting will be a discussion and comparison of the new and previous draft documents as well as a discussion on TDC's and a continuation of the mass appraisal discussion.

Chair Richardson stated that it seems the re-write is more condensed and has alleviated some of the gray areas so that the document is clearer. Mr. Sullivan stated that he feels it only creates more gray areas. Mr. O'Callaghan followed this with an example stating that regarding Family Transfers, the original draft included a timeframe of 10 years. A lot of people liked the idea of having a timeframe and a “sunset” of the restriction. This has been taken out and the regulation is now back to where we are today with no timeframe and no clarity. Mr. Sullivan stated that it is not solving problems to take this type of thing out. There is no predictability with family transfers and suggested that they will be asking the Commission for their rationality of not going with a date certain. Ms. Davis stated that landowners would rather look at the new draft which is simpler. Mr. Sullivan stated that he understands the value of this, but when they come in later wanting to do things and there are too many “what ifs” they may change their mind when interpretation comes into play. Some things have been left in that the Commission initially requested to be removed because it is important in trying to prevent conflict later. Ms. Davis stated that she feels that the two issues that need to stay in – boundary relocations and mortgage exemptions – in order to have resolution on these for everyone involved. Mr. Anderson asked about the status of “old” drafts of the document. Mr. O'Callaghan stated that they will be archived for reference purposes. Chair Richardson asked if the regulation can be re-visited at any time. Mr. Sullivan confirmed that it can be. Mr. O'Callaghan stated that it is a fear, however, that it will be under constant revision. Chair Richardson stated that she has appreciated hearing the input of Ms. Davis as an appraiser, as she has an idea of the affects on someone on the “front line.”

The meeting adjourned at 4:55PM.